

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 12 OF 2017
WITH
CIVIL APPLICATION NO. 11724 OF 2017
WITH
CIVIL APPLICATION NO. 12559 OF 2017
WITH
CIVIL APPLICATION NO. 4877 OF 2018
WITH
CIVIL APPLICATION NO. 5477 OF 2019

1. Shaikh Ismail s/o Shaikh Ibrahim
Age 40 years, Occ. Business,
R/o. Subhash Road, Beed.
 2. Mohd. Rauf s/o Abdul Gafur,
Age 45 years, Occ. Business
R/o. As above
- ...Applicants
(Ori. Defts. 1 & 2)

versus

1. Chotibi w/o Shaikh Karim,
Age 70 years, Occ. Household
R/o. Mali-Ves, Beed
 2. Maharashtra State Board of Waqfs
Through its chief Executive Officer
Panchakki, Aurangabad
- (Ori. Plaintiff)

(Ori. Deft. No.3)
...Respondents

.....
Mr. M.B.W. Khan, advocate for the applicants
Mr. G.R. Syed, advocate for respondent No.1
Mr. Yunus Bashir Pathan, advocate for respondent No.2
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 12.03.2020**

**Date of pronouncing
the Judgment : 13.05.2020**

JUDGMENT :-

1. By consent of the parties, heard finally at admission stage.
2. Being aggrieved by the judgment and order passed by the Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad dated 22.11.2016 in Wakf Suit No. 20 of 2011, the original defendant Nos. 1 and 2 have preferred this revision.
3. Brief facts, giving rise to the present civil revision application are as follows:-
 - a) Respondent No.1 original plaintiff has instituted Wakf Suit No. 20 of 2011 for possession and decree of perpetual injunction in respect of municipal House No. 2-11-142 situated at Malivesh, Beed. According to the respondent-plaintiff, the suit property is Dargah Hazrat Tawalkkalshah and Masjid alongwith graveyard and the husband of the plaintiff was the Mutawalli of the said Dargah. After death of her husband, the plaintiff and her seven children are looking after the affairs and management of said Dargah and Masjid. The Wakf Board had appointed respondent No.1 plaintiff as a temporary Mutawalli of the Dargah and Masjid. According to the respondent-plaintiff, the succession proceeding initiated by her is pending before the Deputy Collector, Atiyat. According to the plaintiff, on 6.5.2009, respondent No.2-defendant No.3, Maharashtra State Wakf Board,

Aurangabad (hereinafter for the sake of brevity referred to as the “Wakf Board”) had executed lease agreement in respect of area of 25x50 i.e. 1250 sq. ft. out of the property admeasuring 145x50 ft. of the Municipal House No. 2-11-142 as specifically described in the prayer clause of the plaint, in favour of the defendant Nos. 1 and 2. On the basis of the said agreement, the applicants-defendant Nos. 1 and 2 came in possession of the suit property. It is further case of the respondent-plaintiff that the period of above said lease had expired and the said lease has not been renewed. However, the applicants-defendants had started construction over the suit portion without permission of the defendant Wakf Board so also the plaintiff. Though the respondent plaintiff had requested the applicants to stop the construction on the suit property but they refused the same and thus, the respondent-plaintiff constrained to institute the suit.

b) The applicants have strongly resisted the suit by filing written statement at Exh.12. It has been specifically denied that the husband of plaintiff was Mutawalli and the plaintiff was appointed as temporary Mutawalli of Dargah and Masjid and the applicants-defendants are making construction on the suit property unlawfully. It is admitted by the applicants that the suit property bearing Municipal House No. 2-11-142 admeasuring 145x50 sq. ft. is the Wakf property belonged to the Dargah and Masjid alongwith grave yard, situated at Mali Darwaza, Beed. According to the applicants, the plaintiff and her relatives, on the basis of false and fabricated

documents, have encroached upon the entire property belonging to Dargah and Masjid. It is further case of the applicants-defendants that on 13.12.1997 one Shaikh Raheem s/o Shaikh Ameer and his three sons gave the suit property to the applicants on lease by obtaining Rs.90,000/- and also executed "Bhade-Patta" (lease deed) for a period of 99 years. Thus, from 13.12.1997, the applicants are in possession of the suit property as tenants and they are also paying the property tax to the Municipal Council, Beed. Subsequently, the applicants came to know that the suit property is Wakf property under the control and supervision of the Wakf Board and the said Shaikh Raheem and his three sons had deceived them. So also the applicants-defendants have approached the defendant No.3 Wakf Board and showed their readiness and willingness to become the tenants. On 6.5.2009, the Wakf Board had issued an order for executing lease deed in favour of the applicants on condition of payment of donation of Rs.30,000/- in two installments and on monthly rent. On 27.5.2009, defendant No.3 Wakf Board had executed lease deed in favour of the applicants by obtaining the donation from them. In the month of February 2010, when the period of tenancy was over, the applicants had approached the District Wakf Officer, Beed and also defendant No.3 Wakf Board and requested them to execute fresh lease deed. However, it is informed them that they would remain as tenants till the tenancy is terminated by issuing the notice by the Wakf Board. According to the applicants, they obtained the electricity connection, water tap connection in respect of

the Wakf property. According to them, the possession and the construction made over is legal. The defendant Wakf Board had not submitted any written statement. Both the contesting parties led their oral and documentary evidence in respect of their rival contentions and learned District Judge/presiding officer, Maharashtra State Wakf Tribunal, Aurangabad, by judgment and order dated 22.11.2016 decreed the suit with costs. By way of temporary injunction, restrained the applicants-defendant Nos.1 and 2 in the suit from making further construction over the suit property and further directed the applicants to hand over the possession of the suit property to respondent No.1-plaintiff or to the defendant No.3 Maharashtra State Wakf Board, Aurangabad. Hence, this civil revision application.

4. Learned counsel for the applicants original defendants submits that Section 3(r) of the Wakf Act 1995, defines the 'Wakf' and deals with creation of Wakf, whereas section 3 (i) of the Wakf Act defines the 'Mutawalli'. Learned counsel submits that in order to ascertain as to how the Wakf has been created and the Mutawalli is appointed, two documents are necessary viz. (i) deed or instrument by which a Wakf has been created and Mutawalli is appointed and (ii) Government Gazette. Learned counsel submits that in the instant case neither there is any deed or instrument by which a Wakf has been created i.e. any immovable property dedicated to the Masjid, Dargah and graveyard nor appointment of any person by such documents as a Mutawalli. Learned counsel submits that initially

Masjid was of tin shed. Dargah platform and graveyard were adjoining to each other admeasuring 145'x50' ft. as per the Government Gazette dated 24.01.1974 and this fact is not disputed by the respondent-plaintiff. Furthermore, the Government Gazette dated 24.01.1974 shows that the area of Masjid, Dargah and graveyard are managed by the Muslim Panch community and they have constructed a new Masjid in RCC in place of old tin shed by collecting the funds and while doing so the Dargah merged into Masjid. Learned counsel submits that the Government Gazette does not disclose the name of the plaintiff or her husband or any of his ancestors as Mutawalli. Further, since the Dargah has been merged into Masjid as per the provisions of Section 203 of Mohammedan Law, the plaintiff has no right to enter into the mosque to perform any religious duties towards Masjid and Dargah. Learned counsel submits that the statement of the plaintiff is self-contradictory. It is the case of the plaintiff that her husband was Mutawalli, however, in her cross examination she had stated that her father-in-law Shaikh Ameer was original Mutawalli of Dargah and Masjid. If it is so, the husband of plaintiff should have claimed the succession of his father and after his demise by his sons in terms of Rule 3 of Hyderabad Atiyat Inquiry Rules 1952. However, there is no evidence to that effect. Learned counsel submits that copy of alleged Muntaqab Exh.89 was issued and produced by District Wakf Officer, Beed after closure of evidence of both the parties. The said document is neither referred in the pleading or evidence of the plaintiff nor filed at the

stage as contemplated under Order VII Rule 14, Order XIII Rule 2, Order XVIII Rule 4 of C.P.C. In spite of that, the learned Member of the Tribunal has exhibited the document and marked it Exh.89. Furthermore, the Tribunal has exhibited the said document without any translation, as some part of it is in Urdu language. Learned counsel submits that the Tribunal has not considered the legality and validity of the genuineness of Muntaqab, as it is false and fabricated document.

5. Learned counsel for the applicants submits that on one hand, the respondent-plaintiff is claiming her father-in-law and husband as Mutawalli, if it is so there must be a succession of her husband after the demise of his father and after demise of her husband a succession of his sons, but no question arises of her to become a Mutawalli. There is no any legal document filed to show that her father-in-law and husband were appointed as Mutawalli. Learned counsel submits that admittedly, the Wakf Board under its order and lease deed dated 27.5.2009, has leased out the suit property to the defendants and at that time it was a tin shed. The people started stealing the articles from the tin shed, so the applicants sought permission to construct the tin shed of four walls with tin roof with tap connection and electric connection. Accordingly, the Wakf Board accorded permission by its letter dated 26.04.2010. Learned counsel submits that the Tribunal has lost sight of the fact that initially there was a structure of tin shed in four side and roof, but persons were stealing the articles from the

shop, so the applicants sought permission of erecting walls in bricks and tin roof. Neither Wakf Board has filed any written statement nor adduced any evidence. Further, the Wakf Board or the Municipal Council has not raised any objection about that construction.

6. Learned counsel for the applicants submits that so far as the issue whether the possession of the applicants is lawful is concerned, there is no pleading of the respondent plaintiff or the Wakf Board that the possession of applicants is unlawful and in spite of that, an issue has been framed to that effect. Further, the respondent-plaintiff has not raised this issue in her evidence. The applicants have pleaded and proved the efforts made by them in order to get extended the lease period, but the Board failed to take any action to that effect. Thus, the Tribunal has overlooked this aspect, as well as the facts that the applicants are entitled to renew the lease. Learned counsel submits that the term and condition No.3 of lease deed, empowers the Wakf Board to cancel the lease deed on breach of its conditions and take the possession of the suit property, whereas condition No.5 of the order of the Wakf Board dated 6.5.2009 empowers the Board to take the possession of the suit property by one month notice, if the property is needed by the Board.

7. Learned counsel for the applicants submits that in the Wakf Act, 1995 there was no provision like Section 3(ee) of the Wakf Act,

2013, to declare any person as an encroacher. The learned Judge has lost sight of the facts that the suit has been filed in the year 2011 and the Wakf Act, 1995 has been amended in the year 2013 and made applicable w.e.f. 01.11.2013, hence the present case would be governed under the Wakf Act, 1995, and not under the Wakf Act, 2013. The provisions of Section 32(i) of the Wakf Act, 1995 empowers the Wakf Board to institute and defend the suits and proceedings relating to Wakfs. Therefore, the respondent plaintiff has no locus standi to file the suit. Learned counsel submits that the provisions of Section 87 of the Wakf Act contemplates the registration of Wakf means a registration under section 36 of the Wakf Act, 1995. Section 43 contemplates that if any Wakf is registered before the commencement of Wakf Act, 1995, under any other law for the time being in force, it need not be registered under Section 36 of the Wakf Act, 1995. The entries in Government Gazette about a Wakf does not amount to a registration of Wakf either under the Wakf Act 1995 or any other law for the time being in force prior to that Act.

8. Learned counsel for the applicants submits that the learned Member of the Tribunal has erroneously referred the provisions of section 83 of the Wakf Act (Amendment Act 2013) by posing it to be the provisions of Section 83 of the Wakf Act, 1995. The provisions of Section 83 of the Wakf Act, 2013 (Amendment Act, 2013) has now given the powers to the Wakf Tribunal to decide dispute about

eviction of tenant or determination of rights and obligations of the lessor and the lessee of Wakf property, but the said provisions are not applicable to the present suit as it pertains to the year 2011. Learned counsel submits that the suit for eviction from the Wakf property is triable by Civil Court as the Act does not provide determination of dispute by the Tribunal. The Amendment Act 2013 has empowered the Wakf Tribunal to deal with eviction w.e.f. 01.11.2013, so the suit instituted prior to that shall be entertained by Civil Court and not by the Wakf Tribunal.

Learned counsel for the applicants in order to substantiate his submissions, placed reliance on the following cases:-

- i) Bama Kathari Patil vs. Rohidas Arjun Madhavi and another, reported in 2004 (2) Mh.L.J. 752;
- ii) C.H. Shah vs. S.S. Malpathak and others, reported in AIR 1973 Bombay 14;
- iii) Shaikh Ghouse Mohiuddin vs. A.P. State Wakf Board and others, reported in AIR 2002 AP 344;
- iv) Purshottam Das Tandon and others vs. State, reported in AIR 1987 ALLAHABAD 56;
- v) Bhuneshwar Prasad and another vs. United Commercial Bank and others, reported in AIR 2000 SC 2796;

- vi) Satish Chand Makhan and others vs. Govardhan Das Byas and others, reported in AIR 1984 SC 143;
- vii) Maulvi Reza Ansari and others vs. Shyamlal Sah and other, reported in AIR 1983 PATNA 299;
- viii) Mohammad Jahan Begum vs. Abdul Hakim, reported in 45 (1991) DLT 3 Delhi
- ix) Shanmugham vs. T.N. State Wakf Board, reported in AIR 1999 Mad. 96
- x) K. Suvaramma vs. A.P. State Wakf Board, reported in 2008 (1) ALD 182 A.P.
- xi) Faseela vs. Muneral Ismal, reported in AIR 2014 S.C. 2064.
- xii) Sohail Azam vs. Atiq-ur-Rahman, reported in 2015 (1) ALL MR 701

9. Learned counsel for respondent No.1 original plaintiff submits that the suit has not been instituted for declaration of hereditary Mutawalli. Furthermore, there is no dispute in respect of Dargah and Masjid. The applicants-defendants are claiming to be in possession of the Wakf property by virtue of a lease, which was already expired and in terms of the provisions of section 3(ee) of the Wakf Act, the applicants are encroachers. The applicants-defendants have no right to raise the dispute about Mutawalli-ship of the husband of respondent-plaintiff so also the respondent-plaintiff in respect of

Dargah and Masjid. Learned counsel submits that copy of Muntaqab Exh.89 was produced by the District Wakf Officer and the same has been verified with the original by the officer of the court. It is clearly mentioned in the Muntaqab Exh.89 that the husband of respondent-plaintiff viz. Shaikh Karim was the Mutawalli of Dargah and Masjid. Furthermore, the order dated 13.9.1996 Exh.45 passed by the then Secretary of Marathwada Wakf Board, clearly establishes that the respondent-plaintiff was appointed as temporary Mutawalli until further orders.

10. Learned counsel for respondent-plaintiff submits that respondent No.2 original defendant No.3 Board which has power of superintendence and is the controlling authority of all the Wakf in the State of Maharashtra has not disputed the fact that the husband of plaintiff was Mutawalli and respondent-plaintiff was appointed as temporary Mutawalli. Learned counsel submits that admittedly, the suit property is the Wakf property of Dargah and Masjid. P.W.1 Chotibi (plaintiff) in her oral evidence deposed on oath that her husband Shaikh Karim was the Mutawalli and after his death she herself and her sons are managing the affairs of Dargah and Masjid. Learned counsel submits that after recasting the issue in respect of Mutawalli-ship, the respondent-plaintiff has produced copy of Muntaqab. Thereafter, as per the directions of the Wakf Tribunal, the District Wakf Officer has produced Exh.89 which has been verified by the original Muntaqab brought by him and its contents are found to

be correct. Learned counsel submits that copy of Muntaqab of endowment has been issued on 14.9.1954 in which it has been specifically mentioned that Shaikh Karim who was the husband of the plaintiff is trustee of Dargah Hazrat Tawwakal Shah and graveyard, Beed. This Muntaqab of Endowment was issued by the Tahsildar, Beed while discharging his official duties as public officer. Thus, the copy of Muntaqab of Endowment Exh.89 is the copy of entry in the public/official book, register or record maintained by the public servant in discharge of his official duty and as such, it is relevant and admissible in evidence as per Section 35 of the Evidence Act. It further appears from the evidence of P.W.1 Chotibi (plaintiff) that she had already initiated the succession proceeding before the Deputy Collector, Atiyat and the same is pending. The applicants-defendants have not produced any document to indicate that the Wakf Board has cancelled the appointment of Chotibi as Mutawalli and she has been removed from the post of Mutawalli of the Board. The fact of appointment of the plaintiff Chotibi as temporary Mutawalli of Wakf has not been disputed or challenged by the defendant No.3 Wakf Board by filing written statement. Learned counsel submits that the Tribunal has rightly decreed the suit. There is no substance in this revision application and the same is liable to be dismissed.

Learned counsel for respondent No.1- original plaintiff in order to substantiate his submissions, placed reliance on the following cases:-

- i) Zahedabi w/o Abdul Razaque Shete and others vs. Maharashtra State Board of Wakf, Aurangabad and others, reported in 2020 (1) Mh.L.J. 416

11. I have also heard learned counsel for respondent No.2 Wakf Board.

12. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the civil revision application, annexures thereto and the reply filed by the respondents.

13. According to the applicants-defendants, on 13.12.1997 one Shaikh Raheem s/o Shaikh Ameer and his three sons gave the suit property on lease by executing the Bhade-patta for a period of 99 years and as such, they are in possession of the suit property as tenants since 13.12.1997. It is their further pleading that they came to know subsequently that the suit property is Wakf property under the control and supervision of Wakf Board and said Shaikh Karim and his three sons have deceived them by playing fraud. Thus, it is clear that the applicants came to know that the suit property is not property of Shaikh Raheem but it is the property of Wakf. It is their further case that on 6.5.2009, the Wakf Board had issued an order of

executing lease deed in their favour on the condition of payment of donation amount of Rs.30,000/- in two installments and on monthly rent. It is also their case that though in the month of February 2010, they had approached the District Wakf Officer, Beed as well as the Chief Executive Officer of the Wakf Board and requested for renewal of tenancy, however, they were informed that unless their tenancy is terminated, they would remain there as tenants. It is thus admitted position that after expiry of lease deed dated 6.5.2009, there is no further renewal of lease, in any form or manner.

14. In the backdrop of these facts, certain provisions of the Wakf Act 1995 are important. In terms of provisions of Section 56 of the Wakf Act, 1995, prior to amendment of the year 2013, lease for any period exceeding three years of any immovable property which is Wakf property shall, notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, be void and of no effect. In terms of sub-section (2) of Section 56 of the Wakf Act 1995, prior to the amendment of the year 2013, a lease period exceeding one year and not exceeding three years of immovable property, which is Wakf property shall, notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board. Section 56 prior to the amendment of the year 2013, reads as under:-

“56. Restriction on power to grant lease of Wakf property;-

(1) A lease or sub-lease for any period exceeding three years of any immovable property which is Wakf property shall, notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of immovable property which is Wakf property shall, notwithstanding anything contained in the deed or instrument of Wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.”

15. In view of this, prior to amendment of the year 2013, admittedly, it is the defendant No.3 Wakf Board which has not renewed the lease of the suit property after expiry of 11 months in favour of the applicants-defendants. In terms of sub-section (3) of section 56 of the Wakf Act, even certain restrictions are imposed while granting renewal thereof. Thus, the Wakf Board is empowered to review the terms and conditions of which the lease or sub-lease supposed to be renewed and then grant approval subject to the

revision of such terms and conditions.

16. In view of the above position, the learned Member of the Tribunal by referring the provision of section 3(ee) has held about the status of the applicants as encroachers. Section 3(ee) of the Wakf Act 1995 reads as under:-

“3. Definitions. – In this Act, unless the context otherwise requires,-

(ee) “encroacher” means any person or institution, public or private, occupying Wakf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by Muthavalli or the Board.”

17. Furthermore, it is also part of record that by order dated 13.09.1996, the then Secretary of Marathwada Wakf board, Aurangabad under the approval of the Chairman of Marathwada Wakf Board, Aurangabad appointed the respondent-plaintiff as wife of deceased Shaikh Karim as temporary Mutawalli of Dargah Hazrat Tawakkal Shah alongwith graveyard in terms of provisions of section 42 of the Wakf Act 1954. It is true that in terms of the provisions of Section 42 of the Wakf Act 1954, the said order of temporary appointment of any person to act as Mutawalli can be made for such period and on such condition as the Board thinks fit. I have gone through the said order Exh. 45 dated 13.09.1996. It has been

directed to respondent-plaintiff Chotibi to obtain the succession certificate from the competent authority and also complete the registration procedure for the above instruments alongwith other conditions. Respondent No.2 Board - original defendant No.3 has not disputed this temporary appointment of respondent plaintiff as Mutawalli.

18. I have carefully gone through the contents of Exh.89 Muntaqab issued on 14.9.1954 in which it has been specifically mentioned that Shaikh Karim, who was the husband of plaintiff and is trustee of Dargah Hazrat Tawakkal Shah alongwith graveyard, situated at Beed. The said document is titled as Muntaqab of Endowment. The property is mentioned as Dargah Hazrat Tawakkal Shah alongwith graveyard situated at Beed. The boundaries are also detailed in the prescribed column. So far as the object of endower is concerned it states "as prayer". In column No.11, the plaintiff's husband name Shaikh Karim is mentioned as occupation Mujawar. It has been stated in column No.14 that notification was issued in the Government Gazette dated 01.08.1953. It has been endorsed below that the Muntaqab of endowment prepared by the Tahsil Office, Beed, the Board of Revenue, Government of Hyderabad. Even in column No.14, it has been specifically mentioned that the proceeding of registration completed. There is no dispute that this is a public document and under the direction of the Wakf Board, the District Wakf Officer has produced the original before the Tribunal and after

its verification, the certified copy placed on record and exhibited. There is no substance in the submission made on behalf of the applicants that the said document has been placed at later stage and that the applicants have no opportunity to file any other document or to cross examine the respondent-plaintiff effectively.

19. On perusal of record, it appears that the respondent-plaintiff has submitted application Exh.83 on 20.6.2016 seeking time to lead further evidence on the ground that the court has re-casted the issue on 7.6.2016 and shifted the burden of issue Nos. 1 to 3 on the respondent-plaintiff to prove that her husband was Mutawalli of the Wakf property. It was informed to the court that in order to discharge her burden, respondent-plaintiff is collecting old documents from the concerned officer. By order dated 20.6.2016, the court has granted time to the respondent-plaintiff. On 27.6.2016 the respondent plaintiff has filed an application Exh.84 for production of document. On the said application Exh.84, the applicant-defendant No.2 had filed an application Exh.85 praying therein to issue direction for production of original Muntaqab. Accordingly, by order dated 22.7.2016 the court has allowed the said application Exh.85 and further directed to issue letter of the Wakf Board/District Wakf Officer for production of original Muntaqab. By order dated 16.8.2016 the court has allowed the said production by observing that the district Wakf Officer has brought the original Muntaqab of Endowment as the copy has been verified by the Superintendent of Court. Even the

counsel appearing for respondent No.3 Wakf Board has filed say to Exh.85 stating therein that the true copy of Muntaqab can be exhibited since verified with the original Muntaqab dated 14.9.1954 and the same may be read in evidence. It appears that even the applicant original defendant Nos. 1 and 2 have also filed an application Exh.87 resisting the application seeking production. However, it is part of record that by filing application Exh.85, the applicant-original defendant No.2 has insisted the court to call original Muntaqab and accordingly by order dated 16.8.2016 the court has allowed application Exh.84. It is thus part of record that the applicants-original defendants have not raised any objection for exhibiting the said document nor they have filed any application for recalling the respondent plaintiff for her cross examination in view of the production of the said document and exhibited by the court after comparing it with the original.

20. After going through entire record, I find no substance in the submissions made on behalf of the applicants-defendants that suit is not tenable as the Dargah and Masjid is not registered Wakf. After going through minutely the documents Exh.89 Muntaqab of Endowment, particularly remark in column 14, it is crystal clear that there is endorsement way back in the year 1953 to the effect that the proceeding about registration has been completed. The respondent-plaintiff has already initiated the succession proceeding before the Deputy Collector, Atiyat and the same is pending. Furthermore, as

rightly observed by the Tribunal, the status of the applicants-defendants is that of encroachers and as such, the applicants-defendants have no authority to remain in possession of the suit property nor they can dispute the status of the respondent-plaintiff in respect of Wakf property. I do not find any substance in the submissions made on behalf of the applicants-defendants that Exh.89 Muntaqab of Endowment is false and fabricated document.

21. In so far as production of document Exh.89 Muntaqab of Endowment is concerned, learned counsel for the applicants has relied upon the judgment of this Court in the case of ***Bama Kathari Patil vs. Rohidas Arjun Madhavi and another, reported in 2004 (2) Mh.L.J. 752.*** However, on perusal of the said judgment, it appears that the same is not in respect of public document and therefore, it cannot be made applicable to the facts and circumstances of the present case.

22. In the case of ***Shaikh Ghouse Mohiuddin vs. A.P. State Wakf Board and others, reported in AIR 2002 AP 344***, wherein Andhra Pradesh High Court ruled that non specification of period in the appointment order of Mutawalli when there is a vacancy in the office of Mutawalli of a Wakf, the said appointment stands vitiated. However, in the instant case, the document of Muntaqab of Endowment unmistakably points out that the husband of the respondent-plaintiff is Mutawalli and undisputedly the respondent

plaintiff has initiated the succession proceeding before the Deputy Collector, Atiyat. However, in the cited case, the appointment as Mutawalli was under challenge on the ground that neither the appointee had any deed nor appointed as Mutawalli. In the instant case, the applicants-defendants have not disputed the status of the property as Wakf property. They are claiming their possession over the suit property on the basis of lease deed executed by the Wakf Board. In consequence thereof, the applicants-original defendants would hardly get right to raise the dispute about Muntaqab of Endowment.

23. Learned counsel for the applicants has placed his reliance on the judgment of Allahabad High Court in the case of ***Purshottam Das Tandon and others vs. State, reported in AIR 1987 ALLAHABAD 56***, however, the said case pertaining to the lease of nazul land of the Government and as detailed in the case the lease continued after expiry of the lease period.

24. In the case of ***Satish Chand Makhan and others vs. Govardhan Das Byas and others, reported in AIR 1984 SC 143***, relied upon by the learned counsel for the applicants, the lease is in respect of private property. In the instant case, in terms of provisions of Wakf Act 1995, particularly section 3(ee) of the Wakf Act, the status of the applicants-defendants after the lease period is over and in absence of any renewal is of encroachers. Furthermore, in terms

of provisions of sub-section (2) of Section 56 of the Wakf Act 1995, prior to the amendment of the year 2013, a lease period exceeding one year itself is void and if it is exceeding one year and not exceeding three years, the same is to be executed with previous sanction of the Board.

25. Learned counsel for the applicants has placed his reliance on the judgment in the case of ***Shaikh Ghouse Mohiuddin vs. A.P. state Wakf Board and others (supra)***, wherein the Andhra Pradesh High Court by referring the provisions of Section 63 of the Wakf Act, 1995 dealt with the appointment of petitioner therein as a Mutawalli and held that though the Wakf Board is entitled to appoint a person as Mutawalli in the office of the Board, the Board shall specify the period on such conditions in the appointment order made in favour of such person. The Andhra Pradesh High Court has thus held that the appointing the petitioner therein as Mutawalli is not in tune with the provisions of the Section 63 of the Wakf Act, 1995 and set aside the same.

26. In the case of ***Maulvi Reza Ansari and others vs. Shyamlal Sah and other (supra)*** relied upon by the applicants-original defendants, Patna High Court held that the Mutawali is merely a manager of the Wakf and is directly under the control and superintendence of the Board and may even be removed from his office in accordance with Section 43 of the Wakf Act, 1995. There is

nothing in the Act which empowers a Mutawalli to institute and defend the Suit and proceedings in a Court of law relating to Wakfs on his own. This power is vested in the Board which is a corporate body which must sue and be sued in its own name.

27. In the instant case, the respondent-original plaintiff has been appointed temporarily as Mutawalli in terms of the provisions of section 63 of the Wakf Act 1995 without specifying the period of her appointment. It was temporary appointment made by the Wakf Board way back in the year 1996 and the same is also subject to succession proceeding initiated by the respondent-plaintiff. It thus, prima facie, appears that the appointment order of the respondent-original plaintiff as temporary Mutawalli is not in tune with the provisions of Section 63 of the Wakf Act, 1995.

28. In terms of provisions of sub-section (3) of Section 13 of the Wakf Act, the Wakf Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued. The provisions of sub-Section (3) of Section 13 of the Wakf Act, 1995 is reproduced herein below:-

*“Section 13. **Incorporation- (1)***

(2)

(3) *The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued."*

29. In the instant case, though the respondent-plaintiff claims to be a Mutawalli appointed temporarily way back in the year 1996 in terms of provisions of Section 63 of the Wakf Act, 1995 and prima facie there is evidence about her succession since her husband was Mutawalli in terms of copy of Muntaqab Exh.37 placed on record, however, as it appears from the facts of the case that the Wakf Board, which has been impleaded as defendant has neither filed written statement nor filed any application before the Wakf Tribunal for transposition of Wakf Board as plaintiff alongwith the respondent to remove the encroachment over the Wakf property. Furthermore, the trial court has also not framed the issue as to the *locus standi* of the respondent-original plaintiff to institute the suit and consequently no finding has been recorded. In the result, this Court left with no other choice but to remand the matter to the Wakf Tribunal with certain directions. Hence, I proceed to pass the following order:-

O R D E R

- I. Civil Revision Application is hereby partly allowed.
- II. The judgment and order dated 22.11.2016 passed by the Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad in Wakf Suit No. 20 of 2011 is hereby quashed and set aside and the matter is remanded back to the Wakf Tribunal, Aurangabad with following directions:-
 - i) The Wakf Tribunal shall restore the Wakf Suit No. 20 of 2011 to its original number.
 - ii) The Wakf Tribunal shall frame the issue about *locus standi* of the respondent-plaintiff.
 - (iii) The respondent No.2 herein Maharashtra State Board of Waqfs (original defendant No.3) in Wakf Suit No. 20 of 2011 is at liberty to file an application for transposition as plaintiff and upon filing such an application, the Wakf Tribunal shall consider the same on its own merits in accordance with law after hearing both the parties.
 - (iv) The evidence (if any) recorded during the course

original trial shall be subject to all its exception be the evidence of trial after remand.

- (v) In addition to this the parties are permitted to lead additional evidence in the event if the Wakf Tribunal decides the application of Maharashtra State Board of Waqfs for transposition as plaintiff in the affirmative.
- (vi) The parties shall appear before the Wakf Tribunal, Aurangabad on 14.07.2020 and the Wakf Tribunal shall decide the suit as expeditiously as possible, preferably within a period of six months from the date of appearance of the parties.
- (vii) Civil Revision Application is accordingly disposed of.

III. In view of disposal of civil revision application, all pending civil applications stand disposed of accordingly.

(V. K. JADHAV, J.)

rlj/